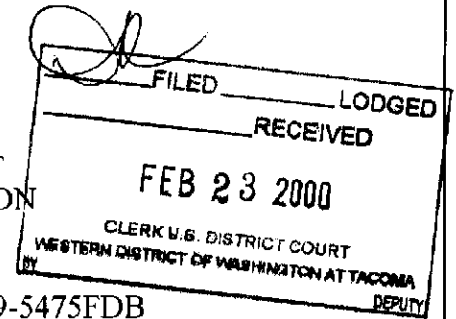


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ON DOCKET

FEB 24 2000

By Deputy \_\_\_\_\_

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DALE G. POITRA, et al.,

Case No. C99-5475FDB

Plaintiffs,

v.

DAVID DUNNING, et al.,

Defendants.

ORDER APPROVING IN PART  
REPORT AND  
RECOMMENDATION, AND  
DIRECTING SERVICE OF  
COMPLAINT

The plaintiffs are prisoners at Clallam Bay Corrections Center ("CBCC"). They present claims regarding the opportunities for worship available to Native Americans. Five prisoners, members of the 55-member TIYOSPAYA CIRCLE, are signatories to the Complaint; they seek to litigate on behalf of all similarly situated CBCC prisoners. The Honorable Ricardo S. Martinez, U.S. Magistrate Judge, has reviewed this matter and recommended that a class not be certified, and that this action be dismissed for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2)(B) & 1915A(b). The plaintiffs have filed Objections.

The plaintiffs fail to understand the thrust of Judge Martinez' analysis regarding class certification and the law precluding representation of others by non-lawyers. The plaintiffs may not litigate on behalf of other CBCC prisoners, but each offended party is allowed to participate in a single action, and under a single complaint, *so long as each plaintiff signs every pleading*. As the action stands now, the five named plaintiffs are the only proper plaintiffs, and may not assert rights belonging to other TIYOSPAYA CIRCLE members or other Native American CBCC prisoners.<sup>1</sup>

Judge Martinez next recommends that this action be dismissed for failure to state a claim. An action may be dismissed for failure to state a claim "if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Keniston v. Roberts, 717 F.2d

<sup>1</sup>The plaintiffs present considerable persuasive argument regarding the difficulties in presenting their freedom of religion claims in piecemeal and individual manner. I do not intend this ruling to signify that the plaintiffs might not be able to present a litigable class action *once they secure legal representation* and satisfy other problems with class certification identified by Judge Martinez.

1 1295, 1300 (9th Cir. 1983)(quoting from Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80  
2 (1975)).

3 Judge Martinez correctly notes that to determine whether prison regulations which limit the free  
4 exercise of religion are valid,

5 the court must consider (1) whether the regulation has a logical connection to the legitimate  
6 government interests invoked to justify it; (2) whether there are alternative means of exercising the  
7 rights that remain open to the inmates; (3) the impact that accommodation of the asserted  
8 constitutional rights will have on other inmates, guards and prison resources; and (4) the presence  
9 or absence of ready alternatives that fully accommodate the prisoner's rights at de minimis costs to  
10 valid penological interests.

11 Report and Recommendation at 5 (citing McCabe v. Arave, 827 F.2d 634, 637 (9th Cir. 1987), and Turner  
12 v. Safley, 482 U.S. 78, 107 S.Ct. 2254, 2262, 96 L.Ed.2d 64 (1987)).

13 The defendants have not been served in this case, and thus have submitted no briefing. There has  
14 been no assertion of "legitimate government interests"; the court should not be in the position of making  
15 the defendants' arguments for them. Absent having the defendants put forth the particular government or  
16 penological interests, and describing the "alternative means of exercising" freedom of religion, I am not  
17 comfortable in finding, "beyond doubt", that the plaintiffs can prove no facts in support of their claims  
18 which would entitle them to relief. I cannot agree that this action should be dismissed without ever being  
19 served upon the defendants.

20 Accordingly, it is hereby

21 ORDERED:

- 22 (1) The court adopts in part the Report and Recommendation;  
23 (2) The request for certification as a class action is DENIED; and  
24 (3) The Amended Complaint shall be provided to the U.S. Marshal for service.

25 The clerk of court is directed to send copies of this order to the Plaintiff and to the Honorable  
26 Ricardo S. Martinez.

27 DATED this 23 day of February, 2000.

28   
FRANKLIN D. BURGESS  
UNITED STATES DISTRICT JUDGE

dk

United States District Court  
for the  
Western District of Washington  
February 24, 2000

\* \* MAILING CERTIFICATE OF CLERK \* \*

Re: 3:99-cv-05475

True and correct copies of the attached were mailed by the clerk to the following:

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Judge Burgess  
Magistrate Judge Martinez